

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 19506 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA****HONOURABLE MS.JUSTICE H.N.DEVANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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M/S. U.M.CABLES LTD. - Petitioner(s)

Versus

UNION OF INDIA THRO' THE SECRETARY - REVENUE & 3 - Respondent(s)

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Appearance :

MR PR NANAVALI for Petitioner

MR JITENDRA MALKAN for Respondent : 1,

DS AFF.NOT FILED (N) for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 27/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. Heard Mr.P.R.Nanavati, the learned advocate for the petitioner and Mr.Jitendra Malkan appearing on behalf of the respondent authorities.

2.RULE. Mr.Malkan waives service. The petition is taken up for final hearing and disposal today in light of the fact that the controversy lies in a very narrow compass.

3.This petition challenges the order in the form of communication dated 25/8/2005 (Annexure "A"). The case of the petitioner is that, by virtue of the said communication, the respondent No.2 has sought to change the classification of the product manufactured by the petitioner in a summary manner without following due process of law. That before making the impugned order / communication, no opportunity of hearing has been granted as no show cause notice has been issued.

4. After the notice was issued and before the matter could proceed further, the petitioner came forward with a proposed amendment which was granted by the Court. By virtue of the said amendment, the petitioner has challenged the communication dated 26/9/2005 (Annexure "C-1"), whereunder respondent No.4 once again reiterated what was stated in the earlier order / communication dated 25/8/2005.

5. There is no dispute as to the fact that the petitioner company is engaged in manufacturing optical fibre cable and for the said purpose, is registered under the Central Excise Act, 1944 (the Act). That the petitioner has been assessed since inception under Tariff Entry No.8544.10 (subsequently re-numbered as 8544.70). For the purposes of manufacturing aforesaid product, the petitioner uses raw material which is either imported or procured from the local market. With effect from 1st

March 2005, the raw material in the form of optical fibre imported for the purpose of manufacturing the final product has been declared to be fully exempt from payment of customs duty vide Customs Exemption Notification No.24/2005.

6.It appears that, on 13/8/2005, the premises of the petitioner at Vapi were visited by a team from the office of the Director General of Anti-Evasion, Preventive Wing of Excise Commissionerate, at Vapi, and certain statements of certain persons present at the plant were recorded. Thereafter, the investigation and inquiries are in progress. It is the say of the petitioner that, during the pendency of such investigation, the impugned order / communication dated 25/8/2005 (Annexure "A") has been served on the petitioner, followed up by communication dated 26/9/2005 (Annexure "C-1"), despite the fact

that, till date, the investigation is in progress and is not complete.

7.Mr.Malkan, appearing on behalf of the respondent authorities, has tendered affidavit in reply dated 13/10/2005 and 25/10/2005 sworn by one Shri S.L.Ghule, Deputy Commissioner, Central Excise, Div-II, Silvassa. In paragraph No.8 of the affidavit in reply, it is stated: "It is a fact that the statements of Shri Ganesh Ranganathan and Gyandera Singh were also recorded under Section 14 of the Central Excise Act, 1944 and the copy of the said statements were not supplied as the matter is under investigation."

8.Once this is the position, as accepted by the respondent authorities on oath, it is apparent that unless and until any adverse material gathered behind back of the petitioner is supplied to the petitioner, and an opportunity

to meet with the same and to be heard, is granted, no order affecting the position of the petitioner adversely can be made by the respondent authorities. If any such order is made, it would directly be in breach of principles of natural justice. In fact, during the course of hearing, Mr.Malkan failed to point out whether any show cause notice was given to the petitioner or whether the petitioner was heard before making the impugned order. To the contrary, the affidavit in reply dated 13/10/2005 itself records that the investigation is in progress and hence, copies of the statements of different persons recorded by the authorities have not been supplied to the petitioner.

9.In such circumstances, the impugned communication / order dated 25/8/2005 and the subsequent communication dated 26/9/2005 cannot be permitted to stand. In the circumstances,

both the order / communication dated 25/8/2005 (Annexure "A") and communication dated 26/9/2005 (Annexure "C-1") are hereby quashed and set aside. The petition is allowed in the aforesaid terms. Rule made absolute. The respondents to pay the costs quantified at Rs.3,500=00 to the petitioner. Direct service is permitted.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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